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1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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10 Ex Parte KYU DONG KIM, YOUNG HOON KIM,
11 BYUNG KWON KWAK, and GAB YOUL LIM

12
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14 Appeal 2008-002704
15 Application No. 09/725,933
16 Technology Center 3600

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19 Oral Hearing Held: May 14, 2009
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23 Before HUBERT C. LORIN, LINDA E. HORNER, and ANTON W.
24 FETTING, Administrative Patent Judges

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27 ON BEHALF OF THE APPELLANTS:

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36 The above-entitled matter came on for hearing on Thursday, May 14,
37 2009, commencing at 10:10 a.m., at the U.S. Patent and Trademark Office,
38 600 Dulany Street, Alexandria, Virginia, before Jan Jablonsky, Notary
39 Public.

1 JUDGE LORIN: Good morning, Counsel. This is appeal number
2 2008-2704. You have 20 minutes. When you're ready, you may proceed.

3 MR. HELGE: Thank you, Your Honor. Good morning. My name is
4 Wayne Helge for Kyu Dong Kim, the appellant in Field Docket No.
5 2008-2704.

6 Your Honors, this morning we'd like to address two claims in our -- in
7 our patent application. Claim 1 is an independent claim directed to a system
8 for automating a business process. Claim 32 is also an independent claim,
9 and it's directed towards a method for automating a business process.

10 Your Honors, if I may approach, I have some briefing books with
11 some exhibits that have already been provided to the Examiner. The
12 Examiner has already considered the material. May I approach?

13 JUDGE LORIN: Is this -- is all this already in the record?

14 MR. HELGE: Yes, Your Honor.

15 JUDGE LORIN: Yes, you may proceed.

16 (Pause.)

17 MR. HELGE: Your Honor, we have two primary points, two primary
18 errors that we'd like to address this morning.

19 The first error affects both Claims 1 and 32, and of course all
20 dependent claims that -- from those independent claims, and this error goes
21 to the Examiner's conclusion that there is a form designer disclosed in the
22 primary reference, Bacon, the U.S. Patent that I provided to you just a
23 moment ago.

1 As we'll get into in some more detail in a few moments, Bacon is
2 actually silent about the design process of the work flow system, and as we
3 can get into, the form designer is part of that design process, and so, by
4 Bacon being silent, it fails to disclose that feature of both Claims 1 and 32.
5 As we can see, Claim 1 has a form generator in its elements. Claim 32 has a
6 step of creating and designing a form.

7 The second error affects Claim 1 primarily, but also has implications
8 for Claim 32.

9 In the most recent office actions, the non-final office action and the
10 final office action from 2006, the Examiner concluded that the LDAP
11 services 150 disclosed in Bacon is an organization manager, as recited in
12 Claim 1. We disagree. The way Claim 1 is structured, the organization
13 manager is a component of the administrator, and the administrator
14 comprises the organization manager.

15 The Examiner goes on to say that the administration interface 140 of
16 Bacon, which we'll also discuss in some more detail, is the administrator of
17 Claim 1.

18 While -- while we disagree with that point, as well, we specifically
19 disagree that this LDAP services 150 discloses the organization manager,
20 and I say that this affects Claim 1 primarily but also has implications on
21 Claim 32, because the Examiner's rejection of Claim 32 is not a 102
22 rejection like it is in Claim 1, but rather, it's a 103 rejection where the
23 Examiner has taken Bacon and modified it based on some conclusions made
24 during the rejection of Claim 14, which depends from Claim 1.

1 So, what the Examiner has done is taken from the Claim 1 102
2 rejection, Claim 14 depending from Claim 1, disclosing features of the
3 organization manager, and said this isn't explicitly disclosed in Bacon, it's an
4 obviousness rejection, and then we drop down to Claim 32, and the
5 Examiner incorporates that 103 rejection from Claim 14 into Claim 32.

6 Now, we think that rejection of Claim 32 by incorporating the
7 obviousness rejection necessarily implicates an error in the 102 rejection as
8 applied to Claim 1.

9 So, right now, I'd like to jump back to -- to that first point, and this is
10 the form designer. I'd like to start with this point even though it wasn't
11 addressed first in our brief, because I think this is a point that will serve my
12 presence here and being able to explain this -- this process in a little bit more
13 detail.

14 I think this will be the most helpful to the Board, perhaps, and what I'd
15 suggest, perhaps, is in -- in the most recent office action, the Examiner cited
16 to Bacon beginning at the bottom of column 6 and running through column 7
17 and into column 8, approximately line 40 of column 8, and argues that these
18 features disclose a form designer.

19 Now, I will submit to you that if we were to read through that entire
20 section, we will not see any mention of designing of a form --

21 JUDGE FETTING: Excuse me.

22 MR. HELGE: Yes, Your Honor.

23 JUDGE FETTING: From reading Claim 1 -- I am seeing a form
24 generator. I'm not seeing a form designer.

1 MR. HELGE: Yes, Your Honor, you're correct. My apologies.

2 The form generator is the term at issue in Claim 1, and I apologize for
3 perhaps being not as concise as I should be. The term in Claim 32 is
4 designing and creating an electronic form, so I may have been confused.
5 You're correct.

6 So, the form generator -- I will submit to you that -- that everything I
7 have said about the form designer is equally applicable to the form generator
8 in -- in Bacon.

9 The way the Examiner interpreted Bacon -- and what we have here
10 going on in Bacon is we have a user entering into a computer, going onto a
11 computer, and calling up a task list, and so, that task list is a browser and a
12 Java applet, and what the Examiner says is that browser and the Java applet
13 disclose the form generator.

14 Well, in fact, if we were to take a look at Bacon, the way the -- the
15 way Bacon describes that browser and that -- and that Java applet, what we
16 have happening is, within the browser, we have Java applet.

17 So, we have software that is used to create a second window within
18 the browser, and in that window, we're getting a task list of work items or
19 activities that are assigned to that user to complete, and then the user has the
20 opportunity to select one or the other to -- to proceed with -- with actually
21 completing those activities, but we don't think that's a form generator, and --

22 JUDGE FETTING: If it's generating something that's being
23 displayed, why is that not a form generator?

1 MR. HELGE: Your Honor, I think, to answer that question best,
2 perhaps I could ask you to -- to retrieve Figure 2 from -- from our
3 application, and I think this might reveal a little bit of what we think it
4 means to be a form generator.

5 In Figure 2 of our application, we have a system architecture, and our
6 system architecture is broken up into two stages.

7 We have a modeling stage and we have an execution stage.

8 The modeling stage is where we start to -- where, for example,
9 someone who is trying to put together this business process and -- and
10 automating this business process, who would -- who would go in and it
11 would look at the organization, look at the potential players, would look at
12 the list of activities there and go into the business process, and one of the
13 steps that can be done here is, on the right side here, we have a form, and
14 this is an electronic form, and now this block represents the form generator.
15 The form generator is designed to take place during the modeling phase.

16 JUDGE FETTING: Is that in Claim 1?

17 MR. HELGE: Well, Your Honor, I think that if we talk about
18 designing and operating an electronic form, I think designing is not simply
19 just retrieving a form that has already been preestablished in perhaps a
20 server or a database somewhere. Designing a form is a creative process
21 that -- that -- that requires more than simply uploading of code that's already
22 been established. It's -- it's -- it's another step beyond that.

23 JUDGE FETTING: It might be inserting of something that happens to
24 be unique to the -- that particular instance, but certainly that's being done. I

1 mean, they are putting -- they are putting objects into their messages and
2 things like that.

3 So, there are changes. In other words, you don't get the exact same
4 screen every time it comes up.

5 MR. HELGE: In -- in Bacon, Your Honor?

6 JUDGE FETTING: Correct.

7 MR. HELGE: Well, I think that we're still talking about -- I think -- I
8 think we're still talking about at the user end, for example, now in our Figure
9 2, we have a web client. We have a web client that -- at the very bottom, in
10 the execution stage -- that permits a user to access, for example, a
11 pre-generated form or something that's already been designed in the form
12 generator to retrieve it, a form that's associated with the activity and to
13 complete certain tasks associated with that activity, and that could be similar
14 to what's being stated here in Bacon, but it's still on the end user -- on the
15 end user side, where the end user is accessing through a browser to
16 something that's been pre-designed, and I think that's the idea.

17 JUDGE FETTING: Well, again, I'm looking at Claim 1, and it seems
18 like the only thing that's required is that -- is that the form generator designs
19 and operates an electronic form, and that it be related to the business
20 process, and that the interface -- it interfaces with at least one of those four
21 things. So, clearly, it interfaces with the database, and clearly, it interfaced
22 with the business application program.

23 So, why isn't it meeting at least one of the requirements in Claim 1?

24 MR. CHAN-PARK: May I answer this?

1 JUDGE LORIN: No, speak through the attorney, please.

2 (Pause.)

3 MR. HELGE: Your Honor, I suppose -- I think what I will -- I
4 apologize if I'm reiterating, but I think my -- our point is really that a
5 browser and a Java applet are -- we're talking -- with Java applet, we're
6 talking about software.

7 We're talking about something that -- that can do essentially things
8 that software can do, but -- but Bacon is silent on the design side.

9 We're talking about a form generator that actually permits the design
10 of forms according to perhaps a supervisor or a project administrator's
11 wishes for the project in itself, and I think the designs -- the term "design"
12 here I think is different than what we have going on in Bacon.

13 Bacon is really talking about the end user. We're not getting into the
14 back end.

15 We're not getting into that design phase where somebody is sitting
16 down and saying we need a form that has this header or this header, this
17 subject line, these -- these data fields, for example, and this is the most
18 efficient way to enter, and these -- how the cursor -- the cursor will go from
19 one block to the next block within the form, and so on and so forth, and I
20 think that's the idea of design, and I don't think we're capturing that in
21 Bacon.

22 JUDGE FETTING: So, you're saying that we can't look at the claim
23 to see the distinction, we have to look at what your concept of a forms
24 designer is to see the distinction.

1 MR. HELGE: I don't agree, Your Honor. I think that when we have
2 in the claim -- wherein the form generator designs and operates an electronic
3 form -- I think the design aspect right there is as I have described it, and I
4 don't -- I don't think we'd need to look beyond that claim language. I think
5 the claim language does capture that -- that design concept.

6 JUDGE FETTING: So, there's no such thing as automated design.

7 MR. HELGE: I don't know if I would go that far, Your Honor.

8 JUDGE FETTING: Well, if there is, then why isn't what -- why
9 isn't -- why isn't Bacon, admittedly trivial, perhaps, design, nevertheless it's a
10 form of design.

11 MR. HELGE: I'm sorry. What -- what -- what --

12 JUDGE FETTING: Why isn't Bacon's admittedly trivial form of
13 design at least a design?

14 MR. HELGE: Well, I think that Bacon doesn't even get to the design,
15 because Bacon already has the form -- for example, certainly, you're
16 right -- I mean, we can -- we call up software code and something appears
17 according to the software code, but somebody had to initially come up with
18 that code, and that code represents the design, not necessarily the execution
19 of the code but the actual writing of the code, and where the code represents,
20 when executed, some -- some physical appearance, some -- some aesthetic
21 appearance, and that's the design aspect, is -- is the back end and not
22 necessarily simply executing code to display something.

1 JUDGE FETTING: But so long as when it executes something, it's
2 actually inserting something into what gets displayed, that's changing the
3 design of what gets displayed.

4 MR. HELGE: I'm not sure I would agree that it's changing the design.
5 I think the design is perhaps fixed --

6 JUDGE FETTING: Okay. So, the issue is what do we mean by
7 design?

8 MR. HELGE: I believe that's --

9 JUDGE FETTING: Okay.

10 MR. HELGE: I know that we've taken a little time on that topic. I
11 think, if acceptable, I'll move on to the next topic, unless --

12 JUDGE LORIN: No, please do.

13 MR. HELGE: -- there are other questions.

14 JUDGE LORIN: Yes, please move along.

15 MR. HELGE: Thank you.

16 The second topic relates to the organization manager. As I mentioned,
17 in the office action, the Examiner says that the LDAP services 150 is the
18 organization manager.

19 Now, if we look into Bacon and see exactly what Bacon says about
20 the LDAP services 150, it's talking about a list. It's talking about a list of
21 people, and it even says that they may or may not be users of the work flow
22 system that's disclosed in Bacon.

23 I think when we -- when we talk about the idea of organization
24 manager, as we've disclosed it in our specification, we've talked about the

1 concept of, for example, an organization with a hierarchy, just like the Patent
2 & Trademark Office, where there is a director and deputy directors, and so
3 on and so forth, a structure, a corporate structure, an organization, and not
4 simply a roster.

5 And I think the Examiner agrees with that, because when the
6 Examiner goes on to examine Claim 14, which recites features of the
7 organization manager, the Examiner says Bacon does not disclose these
8 steps, does not disclose these features.

9 And I think the features the Examiner is pointing to in Claim 14
10 directly relate to that concept of organization and not simply a roster or a list
11 of people without any sort of organizational interrelationships between --

12 JUDGE FETTING: I'm sorry. Can you point to where you're
13 bringing up this argument in the brief?

14 MR. HELGE: Well, Your Honor, I believe that, if we were to look at
15 the first point, the grounds of rejection to be raised on appeal, where we talk
16 about "Bacon fails to disclose every claim limitation in Claim 1," we've said
17 that -- we've said that "The administration interface 140 fails to disclose all
18 of these features of the administrator."

19 JUDGE FETTING: Yeah. You list the -- those -- the organization
20 manager, the role group manager, the authority manager, the process
21 manager, and the holder manager.

22 MR. HELGE: Yes. And this -- the idea of the LDAP services is --

23 JUDGE FETTING: I didn't see any analysis of the LDAP services in
24 relation to these in your brief. That's why I'm asking.

1 MR. HELGE: I see. Well, I think it probably would have been better
2 had we gone into more detail, but I believe that this is somewhat of a subset
3 of -- of this main point that we've addressed in the brief.

4 The main point in the brief really focuses on the administration
5 interface 140, and that -- that point is -- as you may have seen in Bacon, we
6 have simply -- I believe it's two lines where Bacon says, "Administration
7 interface 140 allows a supervisor -- i.e., a person -- to manage the system as
8 required," and the Examiner has taken that to encompass all these features of
9 the administrator in Claim 1.

10 Now, Claim 1 states that the administrator is executable by the
11 computer wherein the administrator manages automating the business
12 process and comprises -- and there we get into the five components.

13 Now, I would certainly agree that the LDAP services 150 is not a
14 component of the administration interface 140. I believe, again, that's
15 somewhat of a subset of our -- our main point of the brief on Claim 1, and I
16 think both points are well taken.

17 We can -- we can -- we can certainly investigate further if you'd like,
18 Your Honor.

19 JUDGE FETTING: I've been looking through the spec. I'm having
20 trouble identifying where you're showing one of ordinary skill how to
21 actually make -- make, in particular, the organization manager, the role
22 group manager, the authority manager, the process manager, and the holder
23 manager.

1 MR. HELGE: Well, I believe that those are software modules, Your
2 Honor, and what we've done is we've given one of ordinary skill in the art an
3 idea of what needs to be managed. For example, with -- with the role
4 group --

5 JUDGE FETTING: That's fine, but 112 first requires that you show
6 how one of ordinary skill how to make and use. So, I'm asking, where does
7 the specification show how you would make those?

8 MR. HELGE: Well, Your Honor, I certainly think that a person of
9 ordinary skill in the art would be familiar with, for example, software
10 programming and would -- would understand the references that we've cited
11 in -- in the early portion of our spec with some of the work flow standards
12 from the early 1990s.

13 JUDGE FETTING: But you're still not telling me where I can
14 find -- where it shows how to make and use those elements.

15 MR. HELGE: I'm sorry, Your Honor. I'm not sure what more I can
16 say beyond -- beyond I think --

17 JUDGE FETTING: I'm just trying to find out whether or not you've
18 complied with 112, first paragraph here.

19 MR. HELGE: Right. I certainly understand.

20 I think that when we take all these factors into account, certainly the
21 computer programming would be understood, the work flow standards from
22 the early 1990s would be understood, and that an idea of what needs to be
23 managed, if we were to go back to someone perhaps familiar with C++, I'm
24 going to say, maybe, in the mid-1990s, given this information, you know, we

1 think that someone could take all this information together and -- and in
2 view of our spec -- and create the administrator that we show, for example,
3 in Figure 3, understanding what needs to be managed, that it needs to be able
4 to be stored in a database and retrieved from the database and that we're
5 talking about managing, for example, organizational information, a
6 hierarchy, for the organization manager, a folder manager, simply creating
7 folders according to the processes, the business process -- managers
8 associating people with roles, associating people with groups.

9 And that's all software programming, we believe, that can be taken
10 together to tie those things together, and we believe that, taken together with
11 our spec and with those things that a person of ordinary skill in the art,
12 in -- in a computer -- in a software model and business process, would
13 understand how to put all that together into the administrator, to create such
14 an administrator.

15 JUDGE LORIN: So, Counsel, do I understand you correctly to say
16 that these -- these particular elements in your -- in your system claim
17 here -- there is no disclosure of any algorithms or particular software
18 program or flow charts or any sort of description that explains how to
19 operate these functions for these elements?

20 MR. HELGE: Well, Your Honor, we do have a flow chart at Figure 7,
21 which is the last page of the figures that I've provided to you, and while this
22 flow chart is sort of a -- a macro flow chart, I think it corresponds well to
23 Claim 32. I believe that this may be what you're looking for.

1 JUDGE LORIN: No, this flow chart is a restatement of what you say
2 in the claim. I don't see that each of these boxes further explains what
3 software you're using to -- to -- to conduct these functions, but if I
4 understand, your argument earlier is that these -- these can all be -- these can
5 be all done through -- through normal software, right, something that you
6 can -- you can normally obtain. Is that right? That's your position?

7 MR. HELGE: I believe that's correct, Your Honor.

8 JUDGE LORIN: Okay.

9 MR. HELGE: That someone -- for example, today, someone who is
10 familiar with Java could do it. Someone who is familiar with Active X
11 through Microsoft could -- could do it, and it would be program
12 language-specific, of course, but I believe that anyone using those sorts of
13 software tools that are available to computer programs would be able to --

14 JUDGE FETTING: You're saying they could program it. You're not
15 saying they could buy these things off the shelf, already programmed.

16 MR. HELGE: Well, Your Honor, now, I think -- I believe the
17 application was filed in 2000. Now, in 2009, I mean it is certainly a
18 possibility that there may be a product --

19 JUDGE FETTING: At the time of filing -- you're not saying, at the
20 time of filing, they could have bought it off the shelf.

21 MR. HELGE: No, Your Honor, not that I'm aware of. My
22 understanding is that this would be something --

1 JUDGE FETTING: So, you would have needed to have some
2 disclosure somewhere of how to actually program it, which they would not
3 have gotten from your application.

4 MR. HELGE: I believe, Your Honor, that if it would have been -- if
5 the programming would have included novel features, then it would have
6 been needed to be included, but I don't think the programming itself is the
7 novel feature, and so, therein, I think we can rely on what we expect a
8 person of ordinary skill in the art to understand about the programming
9 language and being able to take what they know and implement it into what
10 we've given them about the overall structure, the administrator that has this
11 over-arching umbrella with these five different managers included within.

12 JUDGE LORIN: Well, the question is whether one of ordinary skill
13 could -- could implement this system without undue experimentation based
14 on what you have discussed in the specification.

15 MR. HELGE: Yes, Your Honor.

16 JUDGE LORIN: So, I think what I'm hearing you say is that one of
17 ordinary skill would know how to program each one of these elements in
18 order to effect this system that you've claimed without undue
19 experimentation.

20 MR. HELGE: Yes, I agree, Your Honor.

21 JUDGE LORIN: Notwithstanding that particular software and
22 algorithms are not disclosed.

23 MR. HELGE: I agree.

24 JUDGE LORIN: Okay.

1 MR. HELGE: And I believe that's because the actual programming
2 required would not be -- in other words, we haven't claimed, for example, a
3 novel way of programming certain things. What we're saying is that using
4 these commonly available computer languages, you can take what we've
5 given you and program the administrator, for example, program this module
6 or the modeling stage of --

7 JUDGE LORIN: Yeah, but we're not asking whether someone is able
8 to program. We're sure one with the ordinary skill knows how to program.
9 The question is whether one of ordinary skill would know how to program a
10 particular program that will effect what you have claimed.

11 It's not simply a matter of programming. We know programmers, you
12 know, exist at the time this application was filed, but would a -- would
13 someone of ordinary skill know to program a particular program so that this
14 system could be made, and your position is that the answer is yes.

15 MR. HELGE: Yes.

16 JUDGE LORIN: Okay. That's fine. Thank you.

17 MR. HELGE: Your Honor, I have -- this really concludes, I think, my
18 two major points.

19 JUDGE LORIN: Would you like to consult with your colleague? Do
20 you have any further comments?

21 MR. HELGE: May I consult just for a moment?

22 JUDGE LORIN: Absolutely.

23 (Pause.)

24 MR. HELGE: My apologies, Your Honor.

1 JUDGE LORIN: That's fine.

2 MR. HELGE: I believe this will go back to my point earlier, where
3 we had -- where I had staged this Claim 1, Claim 14, and Claim 32, related
4 Claim 14 and Claim 32 together.

5 What we have in Claim 32 is the Examiner admitting that, in the very
6 first step, in modeling the business process, wherein the step of modeling
7 includes generating an organization chart, what we have in Claim 32, in the
8 rejection, is the Examiner admitting that Bacon does not disclose that entire
9 feature, and so, the Examiner has come up with this --

10 JUDGE FETTING: The organization chart.

11 MR. HELGE: Yes, Your Honor. And what he said is that it's
12 common knowledge to create an organization chart, and while that may be
13 the case, that's simply a factual -- a factual issue.

14 First of all, we have -- we have the fact that the Examiner has taken
15 official notice of this and that it's a factual issue, but now what we have,
16 also, is the Examiner is somewhat sidestepping the -- the KSR analysis, the
17 Graham factors, in -- in taking that official notice and now modifying Bacon
18 by that -- by that factual determination.

19 But what we have, in essence, there is we have the Examiner
20 admitting that Claim 32 is not fully disclosed by Bacon. Claim 32 includes
21 an organization chart. Claim 1 includes organization manager, which
22 necessarily, as I've said before, necessarily includes some form of
23 organization and not simply a roster of people.

1 By that admission that Claim 32 is not fully disclosed by Bacon, we
2 think the Examiner has, in essence, admitted, also, that Claim 1 is not fully
3 disclosed by Bacon. I think we have an admission --

4 JUDGE FETTING: Let me suggest that the Examiner is simply using
5 the word "chart" perhaps a little too literally in Claim 32. This gets back to
6 his assertion that the LDAP services, which present a hierarchy of users is
7 essentially an organization chart, and I would suspect that the Examiner was
8 simply saying it's not presented in maybe a visual chart format, but it
9 certainly would suggest a hierarchy of users which is -- which is all an
10 organization chart is.

11 MR. HELGE: Well, Your Honor, I'm not sure I necessarily agree
12 with that interpretation of what's being disclosed in Bacon. The LDAP
13 services -- LDAP, as you've said -- certainly what Bacon says doesn't imply
14 any sort of hierarchy. I mean, it literally --

15 JUDGE FETTING: Well, I mean, LDAP services is a hierarchy, yes?
16 Light directory access protocol?

17 MR. HELGE: I'm actually not familiar in great detail, Your Honor.

18 JUDGE FETTING: Okay.

19 MR. HELGE: If that is the case, if, indeed, that were true, I think it
20 would be the Examiner's burden to put that sort of information on the record,
21 for it to be on the record, and not -- not merely, I suppose, something that's
22 lurking in the background, only to come up at a Board of Patent Appeals and
23 Interferences oral hearing.

1 In addition, it would -- I think it would -- it would beg the question of
2 perhaps the Examiner doesn't fully understand, himself, maybe, the LDAP
3 services, if that is the case, in that the Examiner had to resort to a secondary
4 reference or at least an official notice-type acknowledgement in rejecting
5 Claim 32.

6 Your Honors, I believe I have no further points. If there are any
7 questions, I'm happy to --

8 JUDGE LORIN: No, we have no further questions. Thank you.
9 We'll take your comments under advisement.

10 (Whereupon, at 10:40 a.m., the proceedings were concluded.)